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3 UNITED STATES DISTRICT COURT
4 DISTRICT OF NEVADA
5

6 MONTRAIL D. SMITH,

7 Petitioner,

8 v.

9 BRIAN E. WILLIAMS, SR., *et al.*,

10 Respondents.
11

Case No. 2:15-cv-00487-KJD-VCF

ORDER

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13 This habeas corpus action was stayed on March 28, 2017, pending the
14 petitioner's exhaustion of claims in state court (ECF No. 63). On March 15, 2019, the
15 petitioner, Montrail D. Smith, filed a motion to lift the stay (ECF No. 67). In that motion,
16 Smith states that the state court proceedings have concluded. Smith requests,
17 therefore, that the stay of this action be lifted and that he be allowed to file a second
18 amended habeas petition. Smith's proposed second amended petition is attached to his
19 motion (ECF No. 63-1). Smith states that Respondents do not oppose his motion.
20 Respondents did not respond.

21 Good cause appearing, the Court will grant Smith's motion to lift the stay and will
22 direct the Clerk of the Court to separately file his second amended habeas petition. The
23 Court will also set a schedule for further proceedings in this action.

24 **IT IS THEREFORE ORDERED** that Petitioner's Unopposed Motion to Reopen
25 and File Second Amended § 2254 Petition (ECF No. 67) is **GRANTED**. The stay of this
26 action is vacated. The Clerk of the Court is directed to reopen this case.
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1 **IT IS FURTHER ORDERED** that the Clerk of the Court is directed to separately
2 file Petitioner's Second Amended Petition for Writ of Habeas Corpus (which is attached
3 to his motion, at ECF No. 67-1).

4 **IT IS FURTHER ORDERED** that, pursuant to Federal Rule of Civil Procedure
5 25(d), the Clerk of the Court is directed to substitute Brian E. Williams, Sr., for Timothy
6 Filson, on the docket for this case, as the respondent warden.

7 **IT IS FURTHER ORDERED** that the following schedule shall govern the further
8 proceedings in this action:

9 1. Response to Petition. Respondents will have 90 days from the date of this
10 order to file an answer or other response to the petitioner's second amended petition for
11 writ of habeas corpus.

12 2. Reply and Response to Reply. Petitioner will have 60 days following service
13 of an answer to file a reply. Respondents will thereafter have 30 days following service
14 of a reply to file a response to the reply.

15 3. Briefing of Motion to Dismiss. If Respondents file a motion to dismiss,
16 Petitioner will have 60 days following service of the motion to file a response to the
17 motion. Respondents will thereafter have 30 days following service of the response to
18 file a reply.

19 4. Discovery. If Petitioner wishes to move for leave to conduct discovery,
20 Petitioner shall file such motion concurrently with, but separate from, the response to
21 Respondents' motion to dismiss or the reply to Respondents' answer. Any motion for
22 leave to conduct discovery filed by Petitioner before that time may be considered
23 premature, and may be denied, without prejudice, on that basis. Respondents shall file
24 a response to any such motion concurrently with, but separate from, their reply in
25 support of their motion to dismiss or their response to Petitioner's reply. Thereafter,
26 Petitioner will have 20 days to file a reply in support of the motion for leave to conduct
27 discovery.
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1 5. Evidentiary Hearing. If Petitioner wishes to request an evidentiary hearing,
2 Petitioner shall file a motion for an evidentiary hearing concurrently with, but separate
3 from, the response to Respondents' motion to dismiss or the reply to Respondents'
4 answer. Any motion for an evidentiary hearing filed by Petitioner before that time may
5 be considered premature, and may be denied, without prejudice, on that basis. The
6 motion for an evidentiary hearing must specifically address why an evidentiary hearing
7 is necessary and must satisfy the requirements of 28 U.S.C. § 2254(e). The motion
8 must state whether an evidentiary hearing was held in state court, and, if so, state
9 where the transcript is located in the record. If Petitioner files a motion for an evidentiary
10 hearing, Respondents shall file a response to that motion concurrently with, but
11 separate from, their reply in support of their motion to dismiss or their response to
12 Petitioner's reply. Thereafter, Petitioner will have 20 days to file a reply in support of the
13 motion for an evidentiary hearing.

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15 DATED THIS 24 day of April, 2019.

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18 KENT J. DAWSON,
19 UNITED STATES DISTRICT JUDGE
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